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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

Valley View Building Services, LLC,

Defendant.

No. CR-15-00105PO-01-PHX-MHB

PLEA AGREEMENT

Plaintiff, United States of America, and the defendant, Valley View Building Services, LLC, hereby agree to dispose of this matter on the following terms and conditions:

1. PLEA

The defendant agrees to plead guilty to the Information, which charges the defendant with a violation of Title 8, United States Code, Section 1324a(f)(1), Unlawful Pattern and Practice of Hiring Unauthorized Aliens, a Class B misdemeanor. The defendant further agrees to admit the Forfeiture Allegation set forth in the Information.

2. MAXIMUM PENALTIES

a. A violation of Title 8, United States Code, Section 1324a(f)(1), is punishable by a maximum fine of \$3,000.00, per unauthorized alien involved in the violation, or a maximum term of six (6) months of imprisonment for the entire pattern or practice, or both.

b. According to the Sentencing Reform Act of 1984, the court shall:

1 (1) Order the defendant to make restitution to any victim of the offense
2 unless, pursuant to Title 18, United States Code, Section 3663, the court determines that
3 restitution would not be appropriate in this case;

4 (2) Order the defendant to pay a fine, which may include the costs of,
5 supervised release or incarceration, unless, pursuant to Title 18, United States Code,
6 Section 3611, the defendant establishes the applicability of the exceptions found therein;

7 (3) Order the defendant, pursuant to Title 18, United States Code,
8 Section 3583, to serve a term of supervised release when required by statute or when a
9 sentence of imprisonment of more than one year is imposed, and the court may impose a
10 term of supervised release in all other cases.

11 c. Pursuant to 18 U.S.C. section 3013(a), the defendant shall pay a special
12 assessment of \$10.00 for each count to which the defendant is pleading guilty. The
13 special assessment is due and payable at the time the defendant enters the plea of guilty,
14 but in no event shall be paid later than the time of sentencing unless the defendant is
15 indigent. If the defendant is indigent, the special assessment will be collected according
16 to the provisions of Chapters 227 and 229 of Title 18, United States Code.

17 **3. AGREEMENT NOT TO PROSECUTE**

18 In exchange for the defendant's guilty plea, the government agrees not to pursue
19 felony charges of (1) making material false statements in a matter within the jurisdiction
20 of the executive branch of the government of the United States pursuant to 18 U.S.C. §
21 1001(a), (2) using false attestations for the purpose of satisfying requirements of Section
22 274A of the Immigration and Nationality Act (relating to employment verification)
23 pursuant to 18 U.S.C. § 1546(b)(3), and (3) encouraging and inducing illegal aliens to
24 come to, enter or remain in the United States in violation of law pursuant to 8 U.S.C. §
25 1324(a)(1)(A)(iv), based on the facts and circumstances underlying the Information in
26 this case.

1 **4. AGREEMENTS REGARDING SENTENCING**

2 a. Stipulation to probation. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the
3 United States and the defendant stipulate and agree the defendant shall be placed on
4 probation for a period of five (5) years. As a condition of probation, the defendant shall
5 be required to make payments to satisfy the defendant's forfeiture obligation set forth
6 below in monthly installments.

7 b. Condition of probation. As a condition of probation, the defendant and any
8 business owned by the defendant

- 9 (1) shall continue to use E-Verify;
- 10 (2) shall establish a written hiring and employment eligibility
11 verification policy that includes an internal Form I-9 audit at least once per year;
- 12 (3) shall provide company-wide formal training on Form I-9 procedures;
- 13 (4) shall continue to retain and consult with immigration counsel;
- 14 (5) shall terminate and/or discipline all individuals responsible for the
15 hiring or continued employment of undocumented aliens;
- 16 (6) shall revise or implement procedures for responding to complaints
17 by employees and outside parties, including the devotion of additional resources to
18 properly investigate, track, and close out complaints;
- 19 (7) shall designate an employee responsible for immigration compliance
20 matters; and
- 21 (8) shall not engage in any immigration-related unfair employment
22 practices (see 8 U.S.C. § 1324b).

23 c. If the defendant has fully complied with all terms of probation and the
24 forfeiture sums required under this agreement have been fully paid, the United States will
25 not oppose early termination at any time after the defendant has successfully completed
26 two years of probation.

1 d. Inapplicability of Sentencing Guidelines. Because the offense to which the
2 defendant is pleading guilty is a Class B misdemeanor, the United States Sentencing
3 Guidelines do not apply. *See* U.S.S.G. § 1B1.9 (2013).

4 e. This agreement does not, in any manner, restrict the actions of the United
5 States in any other district or bind any other United States Attorney's Office.

6 **5. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

7 If the Court, after reviewing this plea agreement, concludes that any provision
8 contained herein is inappropriate, it may reject the plea agreement and give the defendant
9 the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P. 11(c)(5).

10 If the defendant's guilty plea or plea agreement is rejected, withdrawn, vacated, or
11 reversed at any time, or if the defendant fails to comply with any condition in this
12 agreement, this agreement shall be null and void, the United States shall be free to
13 prosecute the defendant for all crimes of which it then has knowledge and any charges
14 that have been dismissed because of this plea agreement shall automatically be reinstated.
15 In such event, the defendant waives any and all objections, motions, and defenses based
16 upon the Statute of Limitations, the Speedy Trial Act, or constitutional restrictions in
17 bringing later charges or proceedings. The defendant understands that any statements
18 made at the time of the defendant's change of plea or sentencing may be used against the
19 defendant in any subsequent hearing, trial, or proceeding subject to the limitations of Fed.
20 R. Evid. 410.

21 **6. WAIVER OF DEFENSES AND APPEAL RIGHTS**

22 The defendant waives (1) any and all motions, defenses, probable cause
23 determinations, and objections that the defendant could assert to the indictment or
24 information; and (2) any right to file an appeal, any collateral attack, and any other writ
25 or motion that challenges the conviction, an order of restitution or forfeiture, the entry of
26 judgment against the defendant, or any aspect of the defendant's sentence, including the
27 manner in which the sentence is determined, including but not limited to any appeals
28 under 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and

1 2255 (habeas petitions), and any right to file a motion for modification of sentence,
2 including under Title 18, U.S.C., § 3582(c). This waiver shall result in the dismissal of
3 any appeal, collateral attack, or other motion the defendant might file challenging the
4 conviction, order of restitution or forfeiture, or sentence in this case. This waiver shall not
5 be construed to bar a claim by the defendant of ineffective assistance of counsel.

6
7 **7. DISCLOSURE OF INFORMATION**

8 a. The United States retains the unrestricted right to provide information and
9 make any and all statements it deems appropriate to the U.S. Probation Office and to the
10 Court in connection with the case.

11 b. Any information, statements, documents, and evidence that the defendant
12 provides to the United States pursuant to this agreement may be used against the
13 defendant at any time.

14 c. The defendant shall cooperate fully with the U.S. Probation Office. Such
15 cooperation shall include providing complete and truthful responses to questions posed
16 by the U.S. Probation Office including, but not limited to, questions relating to:

17 (1) criminal convictions, history of drug abuse, and mental illness; and

18 (2) financial information, including present financial assets or liabilities
19 that relate to the ability of the defendant to pay a fine or restitution.

20 **8. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

21 The defendant agrees to the entry of a forfeiture money judgment jointly and
22 severally with co-defendant Jaime Votaw, in the amount of \$250,000, which represents a
23 portion of the sum of money equal to the amount of proceeds obtained as a result of the
24 offense in this case. The defendant agrees the monies were derived from proceeds of
25 violations of Title 8, United States Code, Section 1324a(f)(1). The defendant further
26 agrees to pay the sum of \$50,000 at the time of sentencing, and to pay the remaining
27 \$200,000 of the forfeiture judgment in equal monthly installments during the defendant's
28 term of probation. Payment of the monthly forfeiture amounts will be the joint and

1 several responsibility of both defendants and non-defendant Joel Votaw, and payment in
2 full by either defendant or Joel Votaw will satisfy both defendants' monthly obligation.

3 The defendant agrees that pursuant to Title 28, United States Code, Section
4 2461(c) and Title 21, United States Code, Section 853(p), in the event of the defendant's
5 failure to make timely payments, the United States will seek forfeiture of any other
6 property of the defendant up to the value of the money judgment, including but not
7 limited to, all property, both real and personal, owned by the defendant. A payment is
8 not timely if it is received more than 60 days after it is due or scheduled.

9 The defendant agrees to waive all interests in the assets listed above, and any
10 assets seized to satisfy the money judgment, in any administrative, civil, or criminal
11 judicial proceeding, whether state or federal, which may be initiated. The defendant
12 agrees to consent to the entry of orders of forfeiture for each of the forfeitable assets and
13 waives the requirements of Federal Rules of Criminal Procedure 7 and 32.2 regarding
14 notice of the forfeiture in the charging instrument, announcement of the forfeiture at
15 sentencing, and incorporation of the forfeiture in the judgment. The defendant
16 acknowledges that the forfeiture of assets is part of the sentence that may be imposed in
17 this case and waives any failure by the Court to advise of this, pursuant to Federal Rule of
18 Criminal Procedure 11(b)(1)(J), at the time the guilty plea is accepted.

19 The defendant knowingly and voluntarily waives all constitutional, legal and
20 equitable defenses to the forfeiture of the property in any proceeding. The defendant
21 agrees to waive any jeopardy defense or claim of double jeopardy, whether constitutional
22 or statutory, and agrees to waive any claim or defense under the Eighth Amendment to
23 the United States Constitution, including any claim of excessive fine, to the forfeiture of
24 the property by the United States.

25 The defendant warrants that the defendant is the owner or has an interest in the
26 property listed above, and agrees to hold the United States, its agents and employees
27 harmless from any claims whatsoever in connection with the seizure or forfeiture of
28 assets covered by this agreement. The defendant further agrees to waive all constitutional

1 and statutory challenges in any manner (including direct appeal, habeas corpus, or any
2 other means) to any forfeiture carried out in accordance with this plea agreement on any
3 grounds, including that the forfeiture constitutes an excessive fine or punishment.

4 The defendant knowingly and voluntarily agrees and understands the forfeiture of
5 the assets listed above and any asset seized to satisfy the money judgment shall not be
6 treated as satisfaction of any assessment, fine, restitution, cost of imprisonment, or any
7 other penalty this Court may impose upon the defendant in addition to the forfeiture.

8 In exchange for defendant's guilty plea and sentencing to the Information, as set
9 forth above, and provided defendant complies fully with all terms of this plea agreement,
10 the government agrees to seek no further civil or criminal fines or forfeitures, or
11 administrative fines or forfeitures, related to the criminal conduct stated in the factual
12 basis of the plea agreement provided below.

13 The defendant agrees that the forfeiture provisions of this agreement are intended
14 to, and will, survive the defendant. The forfeitability of any particular property pursuant
15 to this agreement shall be determined as if defendant had survived, and that determination
16 shall be binding on defendant's heirs, successors, and assigns until the agreed forfeiture,
17 including any agreed money judgment, is collected in full.

18 Pursuant to 18 U.S.C. § 3613, all monetary penalties, including restitution
19 imposed by the Court, shall be due immediately upon judgment and subject to immediate
20 enforcement by the United States. If the Court imposes a schedule of payments, the
21 schedule of payments shall be merely a schedule of minimum payments and shall not be
22 a limitation on the methods available to the United States to enforce the judgment. No
23 interest shall accrue on the balance of any forfeiture owed.

24 **9. ELEMENTS**

25 The defendant understands that if the case were to proceed to trial, the government
26 would be required to prove the following elements beyond a reasonable doubt before the
27 defendant could be found guilty of the offense to which the defendant is pleading guilty:
28

Count 1: Pattern and Practice of Hiring Unauthorized Aliens

1. The defendant hired for employment, or continued to employ, in the United States, aliens who were not authorized for employment in the United States;

2. The defendant knew that the persons the defendant hired or continued to employ were aliens who were not authorized for employment in the United States; and

3. The defendant's conduct of hiring such aliens was part of pattern or practice of hiring or continuing to employ aliens who were not authorized for employment in the United States.

Aliens not authorized for employment in the United States are aliens who are not (1) permanent resident aliens or (2) otherwise authorized to be employed in the United States.

10. FACTUAL BASIS

The defendant admits that the following facts are true and that if this matter were to proceed to trial the United States could prove the following facts beyond a reasonable doubt:

Beginning in approximately November of 2008, Valley View Building Services, LLC, through its owners, began a practice of hiring for employment persons who were known not to be authorized to work in the United States. As part of the practice, Valley View Building Services continued to employ unauthorized aliens after receiving confirming information that specific employees at the company were unauthorized aliens.

The practice of hiring and continuing to employ unauthorized aliens continued to approximately November of 2010. During this time Valley View Building Services received business revenue from the ventures associated with the labor provided by the unlawfully-employed aliens in excess of \$250,000.00.

The defendant shall swear under oath to the accuracy of this statement and, if the defendant should be called upon to testify about this matter in the future, any intentional material inconsistencies in the defendant's testimony may subject the defendant to additional penalties for perjury or false swearing, which may be enforced by the United States under this agreement.

APPROVAL AND ACCEPTANCE OF THE DEFENDANT

I have read the entire plea agreement with the assistance of my attorney. I understand each of its provisions and I voluntarily agree to it.

I have discussed the case and my constitutional and other rights with my attorney. I understand that by entering my plea of guilty I shall waive my rights to plead not guilty, to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to present evidence in my defense, to remain silent and refuse to be a witness against myself by asserting my privilege against self-incrimination, all with the assistance of counsel, and to be presumed innocent until proven guilty beyond a reasonable doubt.

I agree to enter my guilty plea as indicated above on the terms and conditions set forth in this agreement.

I have been advised by my attorney of the nature of the charges to which I am entering my guilty plea. I have further been advised by my attorney of the nature and range of the possible sentence and that my ultimate sentence shall be determined by the Court after consideration of the advisory Sentencing Guidelines.

My guilty plea is not the result of force, threats, assurances, or promises, other than the promises contained in this agreement. I voluntarily agree to the provisions of this agreement and I agree to be bound according to its provisions.

I understand that if I am granted probation or placed on supervised release by the Court, the terms and conditions of such probation/supervised release are subject to modification at any time. I further understand that if I violate any of the conditions of my probation/supervised release, my probation/supervised release may be revoked and upon such revocation, notwithstanding any other provision of this agreement, I may be required to serve a term of imprisonment or my sentence otherwise may be altered.

This written plea agreement, and any written addenda filed as attachments to this plea agreement, contain all the terms and conditions of the plea. Any additional agreements, if any such agreements exist, shall be recorded in a separate document and

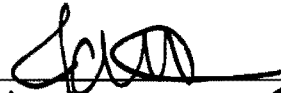
1 may be filed with the Court under seal; accordingly, additional agreements, if any, may
2 not be in the public record.

3 I further agree that promises, including any predictions as to the Sentencing
4 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
5 (including my attorney) that are not contained within this written plea agreement, are null
6 and void and have no force and effect.

7 I am satisfied that my defense attorney has represented me in a competent manner.

8 I fully understand the terms and conditions of this plea agreement. I am not now
9 using or under the influence of any drug, medication, liquor, or other intoxicant or
10 depressant that would impair my ability to fully understand the terms and conditions of
11 this plea agreement.


12 3-26-15
Date


Jaime Votaw, CFO
Valley View Building Services

14 **APPROVAL OF DEFENSE COUNSEL**

15 I have discussed this case and the plea agreement with my client in detail and have
16 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the
17 constitutional and other rights of an accused, the factual basis for and the nature of the
18 offense to which the guilty plea will be entered, possible defenses, and the consequences
19 of the guilty plea including the maximum statutory sentence possible. I have further
20 discussed the concept of the advisory Sentencing Guidelines with the defendant. No
21 assurances, promises, or representations have been given to me or to the defendant by the
22 United States or any of its representatives that are not contained in this written
23 agreement. I concur in the entry of the plea as indicated above and that the terms and
24 conditions set forth in this agreement are in the best interests of my client. I agree to
25 make a bona fide effort to ensure that the guilty plea is entered in accordance with all the
26 requirements of Fed. R. Crim. P. 11.

27 3/26/15
Date


Matthew Martinez
Attorney for Defendant

APPROVAL OF THE UNITED STATES

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth herein are appropriate and are in the best interests of justice.

JOHN S. LEONARDO
United States Attorney
District of Arizona

7 Apr 2015
Date

Joseph E. Koehler
Joseph E. Koehler
Assistant U.S. Attorney

ACCEPTANCE BY THE COURT

Date

Michelle H. Burns
United States Magistrate Judge